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REPORT OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS ON ITS NINTH SESSION

held at the Palais des Nations, Geneva
from 2 to 6 December 1996

The attached report (JIGE(IX)/4)* has been prepared on the ninth session of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects.

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Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects

Ninth session

Geneva, 2 to 6 December 1996

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INTRODUCTION

1. The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD), held its ninth session at the Palais des Nations, Geneva, from 2 to 6 December 1996.

2. During the session, two plenary meetings and eight informal meetings of the sessional group of the whole were held.

Opening statement

3. The Deputy Secretary-General of UNCTAD, speaking also on behalf of the Secretary-General of IMO, said that the objective of the Group's work was to produce a legal framework which would protect the interests of owners of cargo and ships by securing the free movement of vessels and by prohibiting arrest for unjustifiable claims and claims not related to the operation of vessels. An appropriate legal framework widely accepted by the international community would contribute to greater international uniformity of rules applicable to the enforcement of maritime claims. He congratulated the Joint Group for the progress achieved during the two sessions devoted to the review of the 1952 Convention on Arrest of Ships; he was particularly pleased that the work had been carried out in an atmosphere of excellent cooperation between the two United Nations agencies and the private sector, particularly the International Maritime Committee (CMI), which had provided very valuable assistance to the Group.

4. Pursuant to the outcome of UNCTAD IX, UNCTAD had been given a new, revitalized role. Its mandates had been streamlined and focused on key issues directly related to trade and development. Both the intergovernmental machinery and the secretariat had gone through a process of restructuring and reorientation and prioritization of their work to enable them to respond better to the new challenges. As a result of these structural changes, this would be the last session of the Group to be held in UNCTAD. However, UNCTAD would, in principle, continue to cooperate with IMO until the work of the Joint Group had been completed.

Chapter I

CONSIDERATION OF THE REVIEW OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

(Agenda item 3)

5. For its consideration of this item, the Joint Intergovernmental Group of Experts (JIGE) had before it the following documentation:

"Consideration of the Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 - note by the secretariats of UNCTAD and IMO" (JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39);

"Compilation of comments and proposals by Governments on the draft articles for a convention on arrest of ships - note by the secretariat of UNCTAD" (JIGE(IX)/3-TD/B/IGE.1/3-LEG/MLM/40).

6. At its opening plenary, the Joint Intergovernmental Group decided to pursue its consideration of this item within the framework of an informal sessional group of the whole.

Informal sessional group of the whole

7. In the course of eight informal meetings, the sessional group of the whole considered the draft articles for a convention on arrest of ships as contained in document JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39. It requested the informal working group established at its eighth session to continue consideration of draft article 1 (1) on definitions.

Action by the Joint Intergovernmental Group of Experts

8. At its 2nd (closing) plenary meeting, on 6 December 1996, the Joint Intergovernmental Group of Experts adopted the report of the sessional group of the whole (TD/B/IGE.1/L.2), as orally amended at the closing meeting of the sessional group, as well as the paper of the informal working group on Article 1 (1) (TD/B/IGE.1/L.2/Add.1). (For the report of the sessional group and the paper of the informal working group, see annexes II and III respectively.)

9. The Intergovernmental Group of Experts also decided that a document containing revised draft articles for a convention on arrest of sea-going ships would be prepared by the secretariats of UNCTAD and IMO, in consultation with the Chairman of the Intergovernmental Group, on the basis of the decisions of the Group. The document would serve as the basis for the work of a possible diplomatic conference convened by the General Assembly of the United Nations. (For the revised draft articles, see document JIGE(IX)/5-TD/B/IGE.1/5-LEG/MLM/42.)

10. Finally, the Intergovernmental Group of Experts adopted a draft recommendation on the convening of a diplomatic conference (TD/B/IGE.1/L.3), as orally amended (for the text of the recommendation, see annex I).

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

11. The ninth session of the Joint Intergovernmental Group of Experts was opened on 2 December 1996 by Mr. C. Fortin, Deputy Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

12. At its opening plenary meeting, on 2 December 1996, the Joint Intergovernmental Group of Experts elected Mr. K.-J. Gombrii (Norway) as its Chairman and Ms. I.I. Barinova (Russian Federation) as a Vice-Chairman. The officers for the ninth session were therefore as follows:

Chairman:	Mr. K.-J. Gombrii	(Norway)
Vice-Chairmen:	Mr. I. Melo Ruiz	(Mexico)
	Ms. I.I. Barinova	(Russian Federation)
Vice-Chairman-cum-Rapporteur:	Mr. Zengjie Zhu	(China)

C. Adoption of the agenda and organization of work

(Agenda item 2)

13. At its opening plenary meeting, on 2 December 1996, the Joint Intergovernmental Group of Experts adopted its provisional agenda, as contained in document JIGE(IX)/1-TD/B/IGE.1/1-LEG/MLM/38. The agenda for its ninth session was thus as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Consideration of the review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

4. Provisional agenda and date of the next session

5. Other business

6. Adoption of the report of the ninth session

14. Also at its opening plenary, the Joint Intergovernmental Group decided to establish an informal sessional group of the whole to consider agenda item 3.

D. Provisional agenda and date of the next session

(Agenda item 4)

15. The Joint Intergovernmental Group of Experts considered that it had completed its work on the topic before it and that the question of a future session should be decided on by its parent bodies.

E. Adoption of the report of the ninth session

(Agenda item 6)

16. At its closing plenary meeting, on 6 December 1996, the Joint Intergovernmental Group of Experts adopted its draft report (TD/B/IGE.1/L.1) and authorized the Rapporteur to complete the text in the light of the proceedings of the closing plenary.

Annex I

RECOMMENDATION ADOPTED BY THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS AT ITS NINTH SESSION

The Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects recommends to the International Maritime Organization (IMO) Council and to the Trade and Development Board of UNCTAD that they consider favourably, on the basis of the useful work done so far, proposing to the General Assembly of the United Nations the convening of a diplomatic conference to consider and adopt a convention on certain rules relating to the arrest of sea-going ships on the basis of the draft articles prepared by the Group of Experts.

Annex II

REPORT ON THE WORK OF THE SESSIONAL GROUP OF THE WHOLE OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS AT ITS NINTH SESSION

Item 3: Consideration of the Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

1. The Sessional Group of the Whole continued consideration of the draft articles for a Convention on Arrest of Ships, as contained in document JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39.

Article 1 - Definitions

Paragraph (1)

2. The Sessional Group discussed the question as to whether Article 1 (1) should adopt a similar approach to that of the 1952 Convention and provide an exhaustive list of maritime claims, or whether it should adopt a more flexible approach by retaining a non-exhaustive list. Opinions were divided on the subject; while many delegations preferred flexibility and a non-exhaustive list, others favoured having a closed list of maritime claims. One delegation proposed adopting a closed list provided that each maritime claim was described in general terms and that Article 3 (1) permitted arrest irrespective of whether the claim was secured by a maritime lien and whether the shipowner was personally liable for the claim.

3. The Sessional Group agreed that the question was decisive and could not be agreed at this stage. It was, therefore, decided to place the relevant words in the chapeau of Article 1 (1) in brackets and leave the matter to be decided at a later stage, possibly by a diplomatic conference.

4. The Chairman of the Informal Working Group on Article 1 (1), reporting on the work of the Informal Group, said that the paper submitted to the Sessional Group (see annex III below) was the result of discussions by 12 delegations. It identified which changes had been agreed in London and Geneva respectively. In addition, a number of endnotes were attached to the paper in order to provide a more accurate account of the different views expressed by delegations.

5. With respect to the relationship between "maritime claims" and "maritime liens", the observer for the International Maritime Committee (CMI) noted that, in ensuring that maritime liens recognized by the 1993 International Convention on Maritime Liens and Mortgages (MLM Convention) were covered by the definition of "maritime claim", there was no need strictly to use the same wording, since "maritime liens" were by nature more restrictive than "maritime claims".

6. One delegation referred to the task of the Working Group of ensuring that the list of maritime claims in Article 1 should include all claims with maritime lien status under the 1993 MLM Convention but should not necessarily be restricted to claims with maritime lien status.

7. One delegation said that there was overlap between subparagraphs (a) and (h) and that subparagraph (h) should therefore be deleted. The same would apply to the last sentence of subparagraph (d) that referred to "or losses incurred, or likely to be incurred, by third parties", since subparagraph (a) referred to "loss" as well.

8. One delegation questioned the changes in subparagraph (m), where the word "construction" was replaced by "building" and expressed concern as to the suggestion to include the word "physical" in subparagraph (a), as suggested in the endnotes by two other delegations, since such inclusion would prevent "economic losses" from being covered by subparagraph (a).

9. Another delegation requested some clarification as to the reasons for including "shippers" in subparagraph (p). It was hard to imagine a concrete situation in which shippers made disbursements on behalf of the ship. The delegation proposed the deletion of the word "shipper" and reversion to the JIGE draft if the change was not intentional.

10. Another delegation suggested that to refer only to "port dues and charges" in subparagraph (n) might be interpreted in a restrictive manner, since it might not include all the charges originating in the port, such as mooring and wharfage charges. It asked for subparagraph (n) to be redrafted to ensure that all port fees and charges were included.

11. One delegation noted that subparagraphs (a) and (h) were kept because the second part of subparagraph (a) was deleted. The suggestion to retain the word "physical" in subparagraph (a) was made so that consequential losses would not be included. This delegation suggested that the word "direct" in subparagraph (b) should be kept in brackets, since the Group was divided as to whether it should be retained or deleted. The word "shipper" in subparagraph (p) was introduced following the 1952 text of the Convention. One delegation pointed out that the specific issue of inserting the word "shipper" had not been discussed in the Working Group. Concerning subparagraph (d), this delegation felt that, in keeping with the compromise in relation to the MLM Convention, a vessel should not be arrested for claims which arose out of the damage in connection with the carriage of oil or other hazardous or noxious substances for which compensation was payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance. Concerning subparagraph (e), this delegation felt that ships in distress should not be arrested due to the inherent risks involved.

12. Another delegation stressed that the word "charges" in subparagraph (n) was satisfactory as drafted and would cover all charges incurred by a ship in a port.

13. One delegation noted that the merging of subparagraphs (s) and (v) might present some drafting problems since Article 4 (1) made some cross-references to Article 1 (1). It would be better to keep subparagraphs (s) and (v) as originally drafted.

14. One delegation expressed serious concern about retaining the brackets in the umbrella text of Article 1 (1), since a majority of the Group had expressed on various occasions a preference for an open list. To keep the brackets and the list might be misleading as to the real preferences expressed by the Group. However, the Group decided to adhere to its previous decision to identify the problem through the use of brackets.

15. It was agreed that the comments made by delegations would be reflected in the report of the Group and the paper of the Informal Working Group would be attached to the report. It was further agreed that the secretariat would produce a clean text of all of the draft articles, including Article 1 (1), in consultation with the Chairman and reflecting the discussions of the Sessional Group.

Paragraph (2)

16. The Group noted that, at its last session, it had decided to revert to the definition of arrest contained in Article 1, paragraph 2, of the 1952 Convention. Most delegations supported in principle the proposal made by Japan (document JIGE(IX)/3, paras. 2 and 3) to specifically exclude in arrest procedures consideration of any document which could be enforced in a way similar to a judgement. In the opinion of several of these delegations, the expression "other documents" contained in this proposal was too imprecise, and adequate wording would have to be found. The Group also considered the proposal by the United Kingdom (JIGE(IX)3, paras. 7-9) that the definition of "arrest" should be modelled more closely on that of the 1952 Convention and, in particular, the words "when at the time of such detention or restriction the ship is physically within the jurisdiction of the State where the order has been made" in the first sentence should be deleted.

17. It was suggested that, if the definition included in Article 1 (2) of the 1952 Convention with the inclusion of the proposal made by Japan was going to be retained, the second part of this definition, as contained in Article 1, paragraph 2, which had been prepared by the JIGE, could be retained.

18. A suggestion that the definition of arrest should include not only reference to physical measures but also the regulation of legal effects was not supported on the grounds that legal effects would be very difficult to enforce worldwide on account of the operation of national law.

19. Following consultations with several delegations, the Chairman made a proposal for a new text for this paragraph contained in document TD/B/IGE.1/CRP.3. Bearing in mind several amendments made in connection with this proposal, the Group adopted the following text:

"Arrest" means any detention or restriction on removal of a ship as a conservatory measure by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgement, arbitral award or other enforceable instrument.

20. Views were expressed on the possible inclusion of reference to the physical presence of the ship within the jurisdiction of the State where the arrest was made. This issue was settled, however, in Article 8 (1).

21. The Group noted that, in view of its paramount importance, this definition might require further consideration.

22. A discussion was also held on whether reference should be made to the legal constraints which might be the result of an arrest, such as a ban on mortgaging or selling the ship under arrest. The Group did not agree to the inclusion of any text in this regard, since it was felt that the effects of an arrest ought not to be regulated in any definition of the Convention but left to national law.

Paragraph (3)

23. The Group accepted the proposal made by the United Kingdom in document JIGE(IX)/3, paragraphs 10 and 11, to replace the definition of "person" by the one contained in the 1969 Civil Liability Convention and the 1996 Hazardous and Noxious Substances (HNS) Convention.

Paragraph (4)

24. One delegation was of the opinion that arrest should be permitted only if there was a risk that the alleged claim might not be satisfied. This was not accepted by the Sessional Group. It was pointed out in that context that definitions should not be unnecessarily burdened with substantive requirements, which should be dealt with in other articles of the Convention.

Paragraph (5)

25. No comments were made in respect of this paragraph. The Sessional Group accepted the text of this subparagraph as presently drafted.

26. Some delegations suggested that the text in Spanish of this article be rephrased so as to reflect the meaning of this provision in a positive rather than a negative way, as in the English text.

Article 2 - Powers of arrest

Paragraph (1)

27. There was wide support for the proposal made by the United Kingdom in document JIGE(IX)/3, paragraph 12, to delete reference to arrest "demanded" and replace the expression "effected" by "made". Some delegations also proposed the inclusion of the reference to "Contracting State" as in Article 4 of the 1952 Convention. A proposal to include a reference to the fact that

the vessel should be within the jurisdiction of a contracting State did not find support on the grounds that several delegations considered this circumstance to be self-evident.

28. The Group discussed whether a decision by a court was necessary in all cases to release a ship from arrest. Some delegations were of the opinion that agreement between the claimant and the defendant duly communicated to port authorities could be accepted as providing sufficient title for a release without the intervention of the court which had authorized the arrest. Such a procedure could be helpful in cases where the parties had reached an agreement during public holidays when courts were not operating.

29. Most delegations opposed this view. In their opinion the intervention of a court for the release of a ship was required on grounds of the need for legal certainty and as a basis for the protection of eventual interests of third parties. Reference was also made to cases where court authorities were in fact available at all times during public holidays in order to ensure prompt release of a vessel.

30. The Sessional Group accepted the proposal made by the United Kingdom concerning the inclusion of the reference to "Contracting State", as in Article 4 of the 1952 Convention.

Paragraph (2)

31. The Sessional Group decided to insert the word "only" after "A ship may", so that the paragraph would read "A ship may only be arrested in respect of ...".

Paragraph (3)

32. The Sessional Group considered the proposal of the observer for the International Chamber of Shipping (ICS) to delete the words "or is sailing" from this paragraph.

33. Some delegations suggested that the arrest of a ship already sailing would be difficult to implement and could also pose safety problems. In response, other delegations mentioned cases where the return of a ship already sailing could be secured, especially in the case of ships which were still within large port areas.

34. A discussion was held on the implications, if any, of this paragraph, bearing in mind provisions of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention). In this regard, reference was made to Article 28, paragraph 3, of this Convention, which recognized the right of the coastal State, in accordance with its law, to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters.

35. In this context a reference was made to the right of hot pursuit by the coastal State. It was noted that Article 111 of the LOS Convention allowed the exercise of this right when the coastal State had good reason to believe

that a foreign ship had violated the laws and regulations of that State. It was submitted that this matter of public law did not relate to the scope of implementation of a prospective arrest convention.

36. Bearing in mind the reasons for the inclusion of the possibility to arrest a ship even if it was already sailing, consideration was given to the effect of the possible suppression of the words "or is sailing" from the draft. In the opinion of some delegations, the coastal State would in any case retain the possibility of arresting a ship which was leaving or had left port as long as it was within its jurisdiction. It was suggested that clear terms be included in the convention indicating that arrest could be effected only in respect of ships within the jurisdiction of the coastal State. While some delegations preferred to keep the text of Article 2 (3) as presently drafted, other delegations favoured either deleting or placing the paragraph in brackets.

37. In the view of other delegations, deletion could be interpreted as imposing a limitation on the power of the State to arrest a foreign ship. Such a restriction could in fact result in the impossibility of making arrests in many cases where the claim had not been properly substantiated due to lack of time but was nevertheless legitimate. Reference was also made to the difference between the physical intervention and the legal effects of an arrest, which in many cases was the source of confusion regarding the extent to which a State could enforce jurisdiction in this regard.

38. The Group decided that the text of this paragraph should be placed within brackets.

Paragraph (4)

39. The Group accepted a drafting proposal from the United Kingdom, contained in paragraphs 13 to 15 of document JIGE(IX)/3, designed to clarify the contents of the text. The Group was unable to accept a proposal to delete the words "for the purpose of obtaining security", which were considered superfluous by some delegations, since this was already part of the definition.

Paragraph (5)

40. The Sessional Group discussed the proposal submitted by the United Kingdom (JIGE(IX)/3, para. 16) to refer only to the law of the State in which the arrest was made, thus deleting reference to the law of the State where the arrest was demanded.

41. Some delegations noted that, while a similar proposal had been adopted by the Group in paragraph 1, a distinction should be made in relation to paragraph 5, which covered a different situation. Reference to an application for arrest was in this case important, since it was related to the procedural aspects of the *lex fori*, and cases where arrest was applied for and not granted must also be borne in mind.

42. The Group considered that the language used in the 1952 Convention should be preferred. Accordingly, the Group agreed to replace the words "is demanded or has been effected" by "was made or applied for".

43. One delegation proposed including in the text of this paragraph a requirement according to which, before an arrest was made, notice of the claim should be given to the shipowner or the master of the ship concerned. The proposal contained the proviso that this notice should not be a condition to enable arrest. The delegation explained that this should be considered as the sole procedural requirement to be included in the Convention. It would then be left to national law to decide who should comply with it and whether sanctions for non-compliance should be applied, as well as what the consequences would be of such non-compliance. The inclusion of this proposal in the arrest convention was regarded as preventing the remedy of arrest being used to blackmail shipowners into payment of claims.

44. Most delegations opposed this proposal on the grounds that procedural matters should be considered entirely within the scope of national law. It was also noted that, since the proposal was not a precondition upon which the granting of arrest would depend, it would not achieve its main purpose, namely avoiding a situation where a ship was prevented from sailing by the authorities of the State in which arrest was applied for.

45. The Group was unable to adopt the proposal.

46. The Sessional Group considered a proposal made by France (contained in document TD/B/IGE.1/CRP.2) that Contracting States undertake to include in their domestic legislation rules limiting the financial implications for ports of the arrest of ships. This proposal was in line with several interventions of the International Association of Ports and Harbours (IAPH) on the need to address the implications of arrest of ships for ports.

47. There was general acknowledgment that there was a need to regulate the question of financial implications for ports arising from arrest of ships. While some delegations indicated their readiness to support this proposal, other delegations conditioned their support on the amendment of the proposal to the effect that the enactment of legislation by contracting States would be optional rather than compulsory. One delegation suggested that, as an alternative, a requirement could be introduced in Article 6 that the claimant offer financial security to cover port expenses.

48. Most delegations, however, were of the opinion that, notwithstanding the need for appropriate national legislation, the opportunity and circumstances for the accomplishment of this task should be left entirely to the decision of States. Accordingly, no provision in this regard should be included in a prospective arrest convention.

49. The Group was unable to adopt the proposal made by France.

Article 3 - Exercise of right of arrest

50. The Sessional Group considered the three alternative texts for Article 3, paragraph 1, relating to the exercise of the right of arrest. It also discussed the following new compromise proposal put forward by the delegation of the United States of America (TD/B/IGE.1/CRP.2):

"(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the claim is secured by a maritime lien and is within the following categories: (i) - (v) [as in alternative 1, JIGE(IX)/2]; or

(b) the claim is secured by a maritime lien, other than those referred to in subparagraph (a), recognized under the law of the State where the arrest is requested; or

(c) the claim is based on a registered mortgage or 'hypothèque' or a charge of the same nature; or

(d) [as (c) in alternative 3 in JIGE(IX)/2, page 13]; or

(e) [as (d) in alternative 3 in JIGE(IX)/2, page 13];

Article 3, paragraphs 2 and 3 would remain unchanged (JIGE(IX)/2, pp. 13-14)".

51. The delegation of the United States of America explained that the proposal was based on the present text of alternative 3 and the proposal submitted by it during the eighth session of the Joint Group. Although it continued to favour the text of alternative 2, it recognized that alternative 2 gave rise to serious concerns on the part of several delegations. The present proposal was therefore made to facilitate reaching a compromise solution. The proposal introduced the following changes to alternative 3: (a) the word "granted" was changed to "recognized" so as to allow the national court concerned to authorize an arrest of a vessel if, on the basis of a choice of law analysis, the court recognized the claim being asserted even if its national law did not grant such a lien; (b) the reference to the 1993 MLM Convention was deleted so that the present draft revision of the Arrest Convention could stand alone without direct linkage to that Convention; (c) it incorporated a number of drafting amendments proposed by some delegations after the eighth session of the Joint Group. In Article 3 (1) (b), the words "other than those referred to in subparagraph (a)", were included. In summary, the proposal clearly set out maritime liens recognized under Article 4 of the MLM Convention and provided a means of enforcing maritime liens other than those recognized in Article 4 of the Convention, but no State was required to enforce maritime liens arising under Article 3 (1) (b). The matter was left to the national law of the court considering the case.

52. Most delegations considered that, although the proposal of the United States of America had some drawbacks, it provided a good basis for a compromise.

53. Some delegations which had favoured alternative 3 or alternative 1 were prepared to accept the proposal subject to certain amendments, as it was understood that the proposal was in line with the compromise adopted under Article 6 of the 1993 MLM Convention. It was pointed out that, while it was

essential to keep the two Conventions separate, it was also important to ensure conformity between them. It was questioned whether the omission of any reference in paragraph (b) to the words in the chapeau of Article 6 of the MLM Convention was intentional. In the view of some delegations, under Article 6, only claims against "the owners, demise charterer, manager or operator of the vessel" could be secured by a national maritime lien. According to that view, the deletion of any express reference to that article without incorporating the substance of its chapeau would clearly widen the scope of this Convention by also including claims against time and voyage charterers as a basis for arrest. The delegation of the United States of America confirmed that it preferred to keep the present wording of the proposal and to include claims against time and voyage charterers.

54. One delegation proposed including in paragraph (b) the words "claims against the owner, demise charterer, manager or operator of the vessel" in order to ensure that paragraph (b) would be in line with the compromise regarding Article 6 of the MLM Convention. This delegation added that this would be a requirement for the approval of the proposal of the United States of America. It was further suggested that the same words, which were also included in the chapeau of Article 4 of the MLM Convention, should be added in subparagraph (a) of the proposal. These proposals were supported by most delegations.

55. Some delegations questioned the use of the word "registered" in subparagraph (b). Others proposed using the term "registered" also in reference to "hypothèque" and charges of the same nature. One delegation suggested using in subparagraph (c) the words "a mortgage or an 'hypothèque' or a registrable charge of the same nature" from Article 1 (1). Another delegation proposed using in paragraph 1 (a) (v) the same wording as in Article 4 (1) (e) of the MLM Convention.

56. Some delegations preferred using the word "granted" rather than "recognized" in subparagraph (b). It was pointed out that the proposal could otherwise lead to increased forum shopping and would not promote harmonization of law.

57. Some delegations questioned the necessity for retaining subparagraphs 1 (d) (ii) and 2 (b) of Article 3. These delegations preferred the approach of the 1952 Convention and proposed preventing arrest for claims not secured by maritime liens for which demise charterers and time charterers were personally liable. These delegations therefore proposed deleting these subparagraphs.

58. One delegation stated that the object of the Arrest Convention was to secure free movement of the vessel and to serve international seaborne trade. As a result, it would protect the interests not only of shipowners but also of all those involved in international trade, including cargo owners, charterers, port authorities, banks, etc. It was consequently in the interest of the whole industry to restrict arrest to cases of absolute necessity. In the view of this delegation, arrest should only be allowed when the owner was liable for the claim. In cases where the owner was not personally liable for the

claim, arrest should be permitted in exceptional cases, for example where the claim was secured by an internationally recognized maritime lien. This delegation expressed its preference for alternative 1 and at the same time supported deletion of subparagraphs 1 (d) (ii) and 2 (b) of this article.

59. One delegation questioned the need for paragraph 3 of this article. It was explained that this paragraph formed part of the compromise reached at Lisbon to prohibit arrest for claims which could not be enforced against the ship.

60. The Sessional Group also considered a proposal by the delegation of the United Kingdom (contained in document JIGE(IX)/3). This delegation preferred not to link expressly the two Conventions, especially if the list of maritime claims in Article 1 (1) was to be exhaustive. Any link, if thought necessary, should be limited to referring only to maritime liens recognized by the law of the State in which the arrest was made. It was therefore proposed to amend paragraphs (a) and (b) as follows:

> "(a) the claim is secured by a maritime lien recognized under the law of the State where the arrest is made;
>
> (b) the claim is based upon a mortgage, an 'hypothèque' or registrable charge of a similar nature;"

This proposal was supported by few delegations.

61. The observer for the Institute of International Container Lessors (IICL) proposed that consideration should be given to including time charterers in paragraph 1 (d) (ii) and making arrest more widely available, bearing in mind that it was a lesser remedy than a lien and did not always lead to forced sale, as the vessel was released when security was provided.

62. The observer for the International Ship Suppliers Association (ISSA) expressed concern that ship suppliers' interests would be adversely affected by some of the changes to the Arrest Convention. Before the adoption of the 1993 MLM Convention, ship suppliers had a maritime lien in respect of their claim. The changes introduced into the 1993 MLM Convention, as well as the new Arrest Convention, would considerably weaken the position of ship suppliers.

63. The observer for the International Federation of Free Trade Unions supported the proposal of the United States of America and drew attention to the fact that bilateral agreements between States often prevented crew members from arresting a vessel for their claim.

64. The observer for the International Chamber of Shipping (ICS) preferred the text of alternative 1 but felt that, since this alternative could not be accepted, a compromise had to be found. She therefore suggested that, because of the relationship between the list of claims in Article 1 (1) and the

proposal of the United States of America, consideration should be given to placing the proposal of the United States of America, as amended by some delegations, in brackets, in the same way as in Article 1 (1).

65. In view of the above, the Sessional Group decided to take the proposal of the delegation of the United States of America as a basis and make the following amendments:

(i) To include in subparagraph (a) the words "claims against the owner, demise charterer, manager or operator of the vessel" from the chapeau of Article 4 of the MLM Convention;

(ii) To place subparagraph (b) in brackets, with the addition of similar words from the chapeau of Article 6 of the MLM Convention;

(iii) To use in subparagraph (c) the words "a mortgage or an 'hypothèque' or registrable charge of the same nature" from Article 1 (1); it should also be considered whether the term "registrable" was the correct term to use in this context;

(iv) To place subparagraph (d) (ii) and paragraph 2 (b) of the JIGE text in brackets;

(v) To introduce the concept of claims based on tort from Article 4 of the MLM Convention in paragraph 1 (a) (v) by including in parentheses the words "based on tort" after "physical loss or damage".

Article 4 - Release from arrest

Paragraph (1)

66. The Sessional Group considered the proposal of Japan (document JIGE(IX)/3) that the Group should revert to the text of the 1952 Convention in so far as it excluded mandatory release by provision of security in the case of arrest relating to disputes as to ownership or possession of a ship. This proviso should be added to the present paragraph 1. A second sentence would incorporate the second sentence of the first paragraph of Article 5 of the 1952 Convention, with the following two language corrections of a consequential kind: the expressions "or other appropriate judicial authority" and "bail or other" should be deleted.

67. The Group accepted this proposal.

Paragraph (2)

68. The Group considered the proposal made by the United Kingdom (document JIGE(IX)/3) to delete reference to the value of the ship.

69. This proposal was supported by several delegations on the grounds that the limitation amount applicable in determining the security would, very often, exceed the value of the ship.

70. Other delegations opposed this proposal. In their view the security provided to obtain release should necessarily be related to the value of the ship which would, in the end, be the only value which could be obtained in the case of forced sale. Some of these delegations pointed out that Article 8 (5) made it clear that the Arrest Convention would not affect the application of international conventions providing for limitation of liability.

71. The Group decided that the expressions "not exceeding the value of the ship" should be included within square brackets.

Paragraph (3)

72. No comments were made in respect of this paragraph.

Paragraph (4)

73. The Group noted the views of two delegations according to which the expressions "in respect of the same claim" should be incorporated in subparagraphs (a) and (b) after the first reference to the security given in a State party.

74. The Group considered whether the phrase "save in exceptional circumstances where it would be unjust to do so" should be deleted from subparagraph (a). Some delegations favoured this deletion, bearing in mind the imprecise meaning of the word "unjust" and the unlikelihood of application of this proviso.

75. Other delegations, while accepting that the wording was defective, were of the opinion that the proviso was needed in order to address any possible case where decisions taken within the jurisdiction of a non-party could affect the implementation by a State party of the basic provisions of the convention regarding the release of security.

76. The Group decided that the phrase should be kept within square brackets.

77. Bearing in mind the decision taken on paragraph 2 of Article 4, the Group decided to keep within square brackets the reference to the value of the ship in subparagraph 4 (b).

Paragraph (5)

78. No comments were made in respect of this paragraph.

Article 5 - Right of rearrest and multiple arrest

79. The Sessional Group considered the two alternative texts of the draft articles. The majority of delegations favoured the text of alternative 1, since it was considered to provide a clear and balanced basis for the question of rearrest and multiple arrest. These delegations felt that alternative 2 was too restrictive. Some doubts however, were expressed concerning subparagraph (c) of alternative 1. It was considered to be ambiguous, for example in its use of terms such as "taking reasonable steps", which could

give rise to varying interpretations. A few delegations preferred alternative 2 in order to restrict the right of rearrest so as to make seaborn trade more efficient.

80. In the view of one delegation, alternative 1 did not serve the object of the Convention. It was also pointed out that questions of sufficiency of security for the purpose of release of the ships was covered by the provisions of Article 4. This delegation questioned the point of time and the authority to decide on the sufficiency of security for the purpose of Article 5 (1) (a). In its view, Article 5 (1) (a) would only be relevant if the circumstances of the case had been changed. It was pointed out that such a situation could only arise at a later stage after a vessel had been released through the provision of security, the nature and amount of which had been determined by the Court. If the nature and the amount of the security were agreed by the parties involved, such an agreement should be respected and could not be cancelled unilaterally. One delegation proposed that consequential amendments should be made in Article 5 (1) (a) if suggestions to amend Article 4 (2) to include reference to "global limitation of liability of the ship" or "the size of the claim" were accepted.

81. The observer for the International Chamber of Shipping (ICS) recalled that comments submitted by its delegation during the eighth session of the Joint Group (contained in document JIGE(IX)/4) were still valid. Its delegation supported the text of alternative 2 so as to limit any right of rearrest to specific and clearly defined circumstances.

82. The observer for the International Maritime Committee (CMI) expressed doubts as to whether Article 5 (2) covered the situation where the arrested vessel was sold in a forced sale but the proceeds of sale were not sufficient to satisfy the claim.

83. The Sessional Group agreed to retain the text of alternative 1, keeping subparagraph (c) in brackets, and to delete alternative 2.

Article 6 - Protection of owners and demise charterers of arrested ships

Paragraph (1)

84. Some delegations supported the view expressed by the observer for the ICS that there should be an obligation on the part of the claimant to provide security for any loss incurred by the defendant for which the claimant might be found liable. Thus, it was suggested that paragraph 1 should contain a mandatory rule for the court to impose the obligation to provide security upon a claimant seeking arrest. The expression "may" should accordingly be replaced by "shall". The majority of delegations were unable to accept this proposal. In their view, courts should be given discretion to decide as to if, when and in what nature and amount security should be required from an arrestor. In this regard mention was made of the right of crew members to request the arrest of a ship to secure payment of wages: their right to obtain arrest should be recognized even if they were unable to provide security. In the view of the delegations supporting the replacement of "may" by "shall", these situations were, however, properly addressed in the remaining paragraphs of the article. These delegations were also of the view

that this matter had been correctly categorized by the Chairman as a matter of principle which required consideration by the diplomatic conference. To that effect, these delegations suggested that the word "may" be placed in brackets.

85. The Group considered a proposal made by the United Kingdom (document JIGE(IX)/3, paras. 25 and 26) to delete reference to "unjustified" arrest from paragraphs 1 (a) and 2 (a). It was suggested that, with the exception of wrongful arrest, a claimant should not be penalized for having arrested a ship, even if the action failed on its merits. This proposal was opposed by several delegations. In their view, the deletions suggested would result in narrowing the possibilities of defence of the defendant, who would be compelled to prove the existence of bad faith on the part of the claimant to obtain compensation for loss resulting from the arrest. In connection with the argument that reference to unjustified arrest might conflict with national law, it was noted that such conflicts could be avoided by the operation of paragraph 3 of this article, according to which the liability of the claimant would be determined by the application of the law of the State where the arrest was effected.

86. It was noted that, while in Article 7 (1) reference was made to the jurisdiction on the merits of the case in connection not only with effected arrests but also with security given to prevent arrest, reference to this last case had not been included in Article 6, paragraph (2). In this regard, it was suggested that reference in this paragraph to "security given to prevent arrest" and "obtain the release of the ship" could be included.

87. The Sessional Group agreed to retain the text of Article 6 as presently drafted, but leave the word "unjustified" in paragraphs 1 (a) and 2 (a) in brackets.

Paragraph (2)

88. The observer for the CMI said that paragrah (2) did not expressly provide which State should have jurisdiction if security was provided before an arrest.

Paragraphs (3), (4) and (5)

89. No specific comments were made in connection with these paragraphs.

Article 7 - Jurisdiction on the merits of the case

90. In reply to a question as to the reason for providing broader scope in draft Article 7 for jurisdiction on the merits of the case, the observer for the CMI explained that Article 7 (1) of the 1952 Convention was not in effect a compromise between civil law and common law systems as it purported to be. As a result, common law countries retained their system under which arrest for maritime claims provided a ground for acquiring jurisdiction, while in civil law countries jurisdiction was only afforded by the Convention in respect of certain claims with no specific reason. To achieve uniformity, it had been felt necessary by the drafters of the CMI text in 1985 to grant jurisdiction in all cases and not in respect of certain maritime claims. The observer for the CMI also proposed including a reference to "arbitral tribunal" in

Article 7 (5) after the words "Competent court", so that it read "... or if proceedings before a competent Court or arbitral Tribunal in another State are brought ...".

91. One delegation questioned which law would be applied to decide whether agreements to submit disputes to a Court of another State under Article 7 (1) were validly concluded. The view was expressed that this question was left to national law to decide. That view was commonly shared. Some other delegations proposed to delete the word "validly" in Article 7 (1), since it was not sufficiently clear and could give rise to dispute. One delegation pointed out that the translation of the terms "claim", "claimant" and "maritime claim" into Arabic should be reviewed.

92. The Sessional Group decided to retain Article 7 of the JIGE text, with the addition of "arbitral Tribunal" in paragraph (5).

Article 8 - Application

Paragraph (1)

93. The observer for the Latin American Association of Navigational Law and Law of the Sea (ALDENAVE) drew attention to the fact that this paragraph would make the provisions of the Convention applicable to every sea-going ship, irrespective of its flag. He suggested following the approach adopted in Article 13 (1) of the MLM Convention, adding at the end of the paragraph the following sentence: "provided the ship of a non-contracting State under arrest is subject to the jurisdiction of the State party at the time of the arrest".

94. One delegation supported this proposal, subject to drafting changes. Another delegation favoured the narrow approach provided by the 1952 Convention. While Article 8 of the new draft widened the scope of application of the Convention, Article 9 had the opposite effect. In the view of this delegation, if the 1952 approach was adopted there would be no need for further provision or reservation. This proposal, however, was only supported by one other delegation.

95. The observer for the CMI said that Article 8, paragraph 2, of the 1952 Convention extended the right of arrest in respect of maritime claims also to ships flying the flag of a non-contracting State but did not extend to these ships the benefit granted by Article 2. There was a problem due to the difference in wording of paragraphs 1 and 2 of Article 8. The new text as drafted in Lisbon was more precise and in line with the approach adopted by new conventions such as the 1993 MLM Convention.

96. Most delegations favoured the JIGE text and could not initially accept the introduction into Article 8 of the concept of Article 13 (1) of the MLM Convention, which provided that the vessel be subject to the jurisdiction of the State Party. This was considered unnecessary, since it was evident that the Court could not proceed with arrest unless it had jurisdiction. The majority of delegations, therefore, preferred to keep the present text of Article 8 (1).

97. Subsequently, one delegation proposed the following addition to Article 8 (1): "subject to the condition that the ship of a non-contracting State under arrest is within the jurisdiction of the contracting State at the time that the arrest is made". Another delegation proposed a second alternative more in line with the 1952 Convention: "This convention shall apply to any sea-going ship within the jurisdiction of any State Party."

98. Another delegation proposed a third alternative, consisting of the addition of the following phrase to Article 8 (1): "provided the ship is within the jurisdiction of the State Party".

99. Most delegations supported the second alternative as being simple and concise.

100. One delegation said that the Convention should apply to any sea-going ship within the jurisdiction of a State Party where an order has been made. This delegation requested that the proposal be included as a footnote in the draft text. Other delegations supported this proposal.

101. Several delegations suggested the convenience of adding to the second alternative the following wording: "whether or not that ship is flying the flag of a State Party". It was finally agreed that the text would read as follows:

> "This Convention shall apply to any sea-going ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party."

102. It was furthermore agreed to include a footnote reflecting the view of four delegations to the effect of adding: "where the order has been made" after "... jurisdiction of any State Party".

Paragraph (2)

103. The observer for ALDENAVE suggested that the paragraph should be aligned with Article 3 (1) of the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships, 1926, and that immunity should be granted to the ship at the time when the cause of action arises.

104. The Sessional Group agreed to retain the paragraph as presently drafted, subject to the consideration of any written proposal from ALDENAVE.

Paragraph (3)

105. In the view of one delegation, the paragraph should either be an independent article or form part of Article 3. The Group accepted the content of the paragraph and decided to postpone the decision as to the place of the paragraph.

Paragraph (4)

106. The observer for the International Association of Ports and Harbours (IAPH) said that his organization was currently carrying out a survey in order to ascertain the undesirable effects of arrest of ships in ports. The replies received so far made it very clear that, although large ports enjoyed in general a good level of legal protection, that was not, unfortunately, the case with respect to ports in developing countries, where ships under arrest often disturbed the commercial life of ports and, by occupying in certain cases up to 20 per cent of their capacity, could seriously affect other port users. It was suggested that the provision of the new Convention should reflect the interests of ports, which should be considered as a third party directly affected by the arrest. One delegation sympathized with the IAPH remarks and said that it would submit a written proposal in relation to Article 2 (5).

107. One delegation expressed concern as to the many powers vested in harbour authorities, that were protected by a lien and often by domestic law that permitted the arrest of ships.

108. The observer for the CMI said the purpose of the provision was to provide freedom to maritime authorities wishing to detain or prevent ships from sailing within their jurisdiction for safety reasons.

109. Some delegations supported the retention of the paragraph as presently drafted.

110. The Sessional Group decided to maintain the present text but agreed to consider any written proposal in relation to Article 2 (5).

Paragraph (5)

111. The Sessional Group agreed to keep the present text of Article 8 (5).

Paragraph (6)

112. The Sessional Group agreed to keep the present text of Article 8 (6).

Paragraph (7)

113. The Sessional Group agreed to keep the present text of Article 8 (7).

Article 9 - Reservation

114. The Sessional Group agreed to keep the present text of Article (9).

Annex III

REPORT ON THE WORK OF THE SESSIONAL GROUP OF THE WHOLE

Paper of the Informal Working Group on Article 1

The Informal Working Group met from 2 to 4 December 1996. It was chaired by Mr. P. Calmon Filho (Brazil) and was attended by delegations from Brazil, Canada, China, Finland, France, Greece, Mexico, Netherlands, Sweden, Switzerland, United Kingdom and United States of America.

Article 1 - Definitions

Article 1 (1)

(1) "Maritime claim" means any claim concerning or arising out of the ownership, construction, possession, management, operation or trading of any ship, or *concerning or arising* out of a mortgage or an "hypothèque" or a registrable charge of the same nature on any ship, *or out of salvage operations relating to any ship*, such as any claim in respect of: 1/

(a) *physical* 2/ loss or damage caused by the operation of the ship *other than loss of or damage to cargo, containers and passengers' effects carried on the ship*;

(b) loss of life or personal injury occurring, whether on land or on water, in direct 3/ connection with the operation of the ship;

(c) salvage operations or any salvage agreement;

(d) liability to pay compensation or other remuneration in respect of the removal or attempted removal of a threat of damage, or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement;

(d) the removal or attempted removal of a threat of damage including damage to the environment or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement, or losses incurred, or likely to be incurred, by third parties 4/.

(e) costs or expenses relating to the raising, removal, recovery or destruction of the wreck of the ship or its cargo; 5/

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers in the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried in the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied to the ship for its operation or maintenance;

(m) construction building, repairing, converting or equipping of the ship;

(n) port, canal, and other waterway dues and charges and pilotage dues;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements made in respect of the ship, by or on behalf of the master, owner, demise or other charterer or agent;

(p) master's disbursements and disbursements made by shippers, demise charterers, other charterers or agents on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer; 6/

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer; 7/

(s) any dispute as to ownership or possession of the ship or arising out of a contract for the sale of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a registered mortgage or a registered "hypothèque" or a registrable charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

Notes:

(i) Amendments agreed in London (TD/B/CN.4/GE.2/10 pp. 15-16) as revised in Geneva.

(ii) Amendments agreed in Geneva

The Group further agrees that it would be necessary to reconsider in future work the wording where a restriction of a maritime lien would be inappropriate in respect of a maritime claim.

Notes

1/ Comments by the delegation of the Netherlands: "to add an additional subparagraph reading: (...) which a maritime lien is granted against the owner, demise charterer, manager or operator of the ship, by the law of the State in which the arrest is made".

Since it was the task of the Working Group to ensure that all claims with maritime liens status under the 1993 MLM Convention are included in the list of maritime claims of Article 1 (JIGE(VIII)/7, annex I, para. 18) this proposal was made to ensure that national maritime liens granted under Article 6 of the 1993 MLM Convention were also included in the list of Article 1.

2/ The Chinese and Greek delegations do not agree with the deletion of the word "physical".

3/ The Group is divided as to the retention or deletion of the word "direct".

4/ Comments by the Greek delegation on Article 1 (d): In negotiating the Maritime Liens and Mortgages Convention of 1993, a compromise was reached, which was reflected in Article 4 (2) of the above-mentioned Convention, where no maritime lien shall be attached to a vessel to secure claims which arise out of or result from the cases mentioned there.

The same compromise should be reflected in the new draft articles for new rules on the arrest of sea-going ships.

Therefore, a vessel should not be arrested for claims which arise out of: (a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; (b) the radioactive properties or a combination of radioactive properties of nuclear fuel or of radioactive products or waste.

5/ Comments of the Greek delegation on Article 1, paragraph 1 (e): "In discussing this definition, Greece would like to make clear to everybody that a ship in distress cannot be the subject of arrest due to the tremendous risks involved for the safety of passengers, crew and cargo of the vessel, for the vessel itself and for the environment."

6/ Comments by the Greek delegation on Article 1 (q): The Greek delegation has some doubts about the exact application of Article 1 (q) in several jurisdictions, where peculiarities might arise.

7/ Comments by the Chinese and Greek delegations on Article 1 (r): The two delegations are of the opinion that the provisions of Article 1 (r) are very vague and may lead to situations where a vessel can be arrested for a

very small amount of money.

Therefore, the two delegations believe that this subparagraph should be deleted, bearing also in mind that the commissions, brokerages or agency fees mentioned there result from contracts. Therefore, the claimant had a fair chance to check the credibility of the owner before he entered into the contract.

Annex IV

ATTENDANCE [1]

1. The following States members of UNCTAD were represented at the session:

Argentina
Australia
Benin
Brazil
Canada
China
Cuba
Czech Republic
Denmark
Dominican Republic
Ethiopia
Finland
France
Gambia
Germany
Greece
Honduras
Indonesia
Iran (Islamic Republic of)
Israel
Italy
Japan
Kuwait
Latvia
Libyan Arab Jamahiriya
Madagascar
Mali
Mexico
Morocco
Netherlands
Nigeria
Norway
Panama
Philippines
Romania
Russian Federation
Saudi Arabia
Slovakia
South Africa
Spain
Sudan
Sweden
Switzerland
Syrian Arab Republic
Thailand
Tunisia
United Kingdom of Great Britain and Northern Ireland
United States of America

2. The following associate member of IMO attended the session as an observer:

Hong Kong

3. The following intergovernmental organizations were represented at the session:

Arab Labour Organization
Organization of African Unity

4. The following non-governmental organizations were represented at the session:

General Category

International Bar Association
International Confederation of Free Trade Unions

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[1] For the list of participants, see TD/B/IGE.1/INF.1.

Special Category

Airlines' Worldwide Telecommunications and Information Services
Federation of National Associations of Ship Brokers and Agents
Ibero-American Institute of Maritime Law
Institute of International Container Lessors
International Association of Ports and Harbours
International Chamber of Shipping
International Maritime Committee
International Ship Suppliers Association
Latin American Association of Navigational Law and Law of the Sea.